

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

**RICHMOND DIVISION**

<b>COMMONWEALTH OF VIRGINIA</b>	)	
<b>EX REL. KENNETH T. CUCCINELLI, II,</b>	)	
<b>in his official capacity as</b>	)	
<b>Attorney General of Virginia,</b>	)	
	)	
<b>Plaintiff,</b>	)	
<b>v.</b>	)	<b>Civil Action No. 3:10cv188</b>
	)	
<b>KATHLEEN SEBELIUS,</b>	)	
<b>Secretary of the Department</b>	)	
<b>of Health and Human Services,</b>	)	
<b>in her official capacity,</b>	)	
	)	
<b>Defendant.</b>	)	

**DECLARATION OF WILLIAM A. HAZEL, JR., M.D., SECRETARY OF HEALTH  
AND HUMAN RESOURCES FOR THE COMMONWEALTH OF VIRGINIA**

Comes now, William A. Hazel, Jr., M.D., Secretary of Health and Human Resources for the Commonwealth of Virginia, and, pursuant to 28 U.S.C. § 1746, makes the following affidavit under the penalty of perjury:

1. My name is William A. Hazel, Jr., M.D. I am a citizen of the Commonwealth of Virginia, am over 18 years of age, and am competent as a witness.

2. I am currently the Secretary of Health and Human Resources for the Commonwealth of Virginia. As the Secretary of Health and Human Resources, I oversee 13 executive branch agencies for the Commonwealth of Virginia.

3. In my role as Secretary of Health and Human Resources for the Commonwealth of Virginia, I am familiar with steps that various executive branch agencies and the Commonwealth of Virginia in general are taking to begin to comply with the various provisions of the Patient Protection and Affordable Care Act (“PPACA”).

4. For example, on April 2, 2010, Secretary Kathleen Sebelius of U.S. Department of Health and Human Services wrote to Governor Robert F. McDonnell requesting that Virginia inform her of certain choices that it would be making regarding its participation in certain programs under PPACA.

5. Specifically, Secretary Sebelius inquired regarding the “temporary high risk health insurance pool program” established by Section 1101 of PPACA and requested “an expression of [Virginia’s] interest in participating in this temporary high risk pool program, consistent with one of the implementation options” described in the letter.

6. In the letter, Secretary Sebelius set deadlines for the Governor to respond.

7. Regarding the deadlines and the reasons the information was needed by the deadlines, Secretary Sebelius wrote:

In order to determine the extent to which we will carry out our obligations directly, or under contracts with States or other entities, it is critical that HHS receive States’ indication of intent to participate and requested preliminary information by April 30, 2010. I appreciate your assistance in ensuring that your state provides this information by the specified deadlines. This information will be critical in helping successfully implement the high risk health insurance pool program. HHS intends on establishing an option for eligible individuals in States that do not indicate their intent to participate. A State that indicates its intent but does not follow through with a successful application could be delaying assistance for its residents.

8. On April 30, 2010, Governor McDonnell responded by letter to Secretary Sebelius.

9. In his response, the Governor informed Secretary Sebelius that the

Commonwealth of Virginia will not establish and serve as a vendor of a temporary high-risk pool. Virginia has estimated that the funding available to the Commonwealth in the amount of \$113 million plus or minus 1% will not cover the costs of the program beyond 22 months. This concern has been reinforced by actuaries from the Centers for Medicare and Medicaid Services who have advised states that "by 2011 and 2012 the initial \$5 billion in federal funding for this program would be exhausted, resulting in substantial premium increases to sustain the program."

10. Accordingly, Virginia has already made significant decisions regarding funding and resources under the terms of PPACA as implemented by Secretary Sebelius.

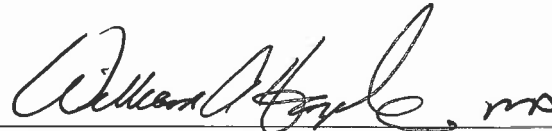
11. In addition to having already been forced to make choices regarding PPACA's temporary high-risk pools under Section 1101, Virginia is in the process of making other decisions and choices regarding how to function under PPACA's terms.

12. As a result, employees in the executive branch agencies of Virginia and within the Bureau of Insurance are being detailed to review the provisions of PPACA, make determinations about any structural changes that are needed to allow Virginia to administer programs affected by PPACA, and otherwise make changes to the structure/operation of Virginia's government in an effort to comply with provisions of PPACA.

13. In short, some Virginia executive branch employees are not performing the tasks that they would otherwise be performing but for the enactment of PPACA. This will remain the case as the various provisions of PPACA become effective over time.

FURTHER DECLARANT SAYETH NOT.

I, William A. Hazel, Jr., M.D., Secretary of Health and Human Resources for the Commonwealth of Virginia, declare under penalty of perjury that the foregoing is true and correct. Executed on June 4, 2010 in Richmond, Virginia.



William A. Hazel, Jr., M.D.  
Secretary of Health and Human Resources for  
the Commonwealth of Virginia

County/City of Richmond  
Commonwealth/State of Virginia  
The foregoing instrument was acknowledged before me  
this 04 day of JUN, 2010, by  
William A. Hazel  
(name of person seeking acknowledgment)  
NPG/100 IL.  
Notary Public My commission expires: 10-31-2013

